U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR A. STULZ and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, New York, NY

Docket No. 02-1257; Submitted on the Record;
Issued October 24, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS, MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or about May 3, 2001 due to his May 5, 2000 employment injury.

On May 5, 2000 appellant, then a 47-year-old special agent, filed a claim for compensation alleging that he sustained an injury to his back, neck and shoulder, when he was involved in an automobile accident in the course of his employment. The Office of Workers' Compensation Programs accepted appellant's claim for neck strain and contusion of the chest wall and paid appropriate compensation. Appellant stopped work on May 5, 2000 and returned to a limited-duty position in June 2000 and full duty September 21, 2000.

Appellant submitted various treatment notes from Dr. Craig H. Rosenberg, Board-certified in physical medicine and rehabilitation. Dr. Rosenberg's reports noted a history of appellant's work-related automobile accident. He diagnosed a cervical strain/sprain and myofascial pain syndrome. Dr. Rosenberg referred appellant for physical therapy. An attending physicians report dated June 24, 2000 diagnosed appellant with cervicalgia and myofascial pain. The work capacity form dated June 28, 2000 noted that appellant could return to work in a desk position subject to various restrictions.

On July 19, 2001 appellant filed a CA-2a, notice of recurrence of disability. He indicated a recurrence of pain in his back, neck and shoulder due to employment-related injuries sustained on May 5, 2000. Appellant stopped work on July 19, 2001 and did not return. He indicated that his recurrence of symptoms began on May 3, 2001.

Appellant submitted a report from Dr. Rosenberg dated July 19, 2001, who indicated that he last examined appellant on September 20, 2000. He reported developing pain in the neck, upper back and shoulder with tingling and numbness sensations radiating to the left fourth and fifth digits which began two months prior. Dr. Rosenberg noted that appellant was currently working full time, eight hours a day with the employing establishment. He noted findings upon physical examination of mild to moderately limited left lateral cervical rotation; shoulder range

of motion was within full limits; impingement sign for the left shoulder was positive; there was crepitus over the left acromioclavicular (AC) joint; there was tenderness over the bilateral levator scapula, left upper trapezius and left rhomboid muscles; Tinel's sign was positive at the left ulnar groove but negative for carpal tunnel syndrome; and Phalen's sign was negative. Dr. Rosenberg diagnosed appellant with rule in left ulnar entrapment neuropathy at the elbow; rule in left shoulder impingement syndrome; history of cervical spine spondylosis and herniated nucleus pulposus (HNP) with associated myofascial pain and muscle tender spots. He noted that the electromyograph (EMG) and nerve conduction studies were normal in September 2000. Dr. Rosenberg recommended appellant stay off work and referred him for additional testing.

By letter dated August 16, 2001, the Office requested detailed medical evidence from appellant, stating that the information submitted was insufficient to establish a recurrence of disability on the above date.

A magnetic resonance imaging (MRI) scan dated August 11, 2000 revealed minimal spondylosis at C6-7 and C7-T1 with broad based posterior osteophytic ridge/disc complex. Dr. Rosenberg's report of August 2, 2001 noted appellant's continued complaints of spasms in the left upper neck and back area. He diagnosed appellant with left shoulder impingement syndrome, rule out osteoarthritis of the AC joint; left ulnar nerve entrapment; myofascial pain with muscle spasm; and status post cervical strain/sprain. Dr. Rosenberg indicated that appellant was totally disabled. Dr. Rosenberg's report of August 9, 2001 noted that a shoulder x-ray revealed an AC joint sprain on the left. He referred appellant to Dr. Nestor Blyznak, a Board-certified orthopedist. Dr. Rosenberg's report of October 10, 2001 indicated that appellant's symptoms had not changed. He noted that appellant showed evidence of left shoulder impingement; left C7-8 radiculopathy; and possibly left ulnar entrapment at the elbow. Dr. Rosenberg noted that appellant remained totally disabled. An x-ray report dated August 1, 2001 revealed evidence of first degree AC joint sprain on the left. A report from Dr. Blyznak, dated August 15, 2001, noted a history of appellant's automobile injury. He noted that appellant reported pain developing approximately two months ago. Dr. Blyznak indicated that appellant experienced radiating pain in the left arm centered around the elbow. He diagnosed appellant with left upper extremity pain; possible lower cervical radiculopathy or cubital tunnel syndrome; and impingement syndrome. Dr. Blyznak gave appellant a subacromial injection and recommended a course of physiotherapy. He noted that appellant was temporarily disabled from his usual occupation. The EMG revealed a minimally abnormal study; evidence suggestive of chronic left C7-8 cervical radiculopathy; with no evidence of entrapment neuropathy of the left arm.

By decision dated October 25, 2001, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish a recurrence of disability on May 3, 2001 causally related to the accepted employment injury sustained May 5, 2000.

In a letter dated February 4, 2002, appellant requested reconsideration and submitted additional medical evidence. He submitted medical reports from Dr. Rosenberg dated November 5 to 21, 2001 and Dr. Blyznak dated January 14, 2002. Dr. Rosenberg indicated that appellant reported no change in his left shoulder or neck pain. He noted a positive impingement sign for the left elbow and tenderness along the posterior shoulder. Dr. Rosenberg recommended

physical therapy. He noted that appellant's symptoms improved and he did not obtain medical follow-up from September 2000 to July 19, 2001. Dr. Rosenberg indicated that appellant currently had evidence of left rotator cuff impingement type syndrome of the left shoulder. He noted that, as a result of appellant's work-related activities he experienced an exacerbation of symptoms that were related to the symptoms he had described the previous year when he was being treated for work-related injuries as a result of the May 5, 2000 injury. Dr. Rosenberg indicated that a causal relationship existed. Dr. Blyznak indicated a history of appellant's injury noting a few months ago, without any new injuries, appellant developed increasing pain and difficulty with the left arm. He noted that he reviewed the diagnostic studies including x-rays, an MRI and an EMG, and noted they were essentially unremarkable. Dr. Blyznak noted that appellant was temporarily disabled from his occupation. Dr. Blyznak indicated that appellant's symptoms from the May 2000 work-related injury resolved with conservative treatment and subsequently appellant developed left upper extremity pain, neck pain and numbness and tingling in his hands. He noted that it was likely that his current complaints are related to the initial accident of May 2000.

By decision dated March 20, 2002, the Office again denied modification.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on May 3, 2001 as a result of his May 5, 2000 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[1] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[2] Moreover, the physician's conclusion must be supported by sound medical reasoning.[3]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[4] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[5] While the opinion of a physician supporting

[1] *Robert H. St. Onge,* 43 ECAB 1169 (1992).

[2] Section 10.104(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. 20 C.F.R. § 10.104(b) (1999).

[3] *See Robert H. St. Onge, supra* note 1.

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[5] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge, supra* note 1; *Shirloyn J. Holmes,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 748 (1986).

causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[6]

The Office accepted that appellant sustained a neck strain and contusion of the chest wall on May 5, 2000. However, the medical record lacks a well-reasoned narrative from appellant's physician relating appellant's claimed recurrent condition, beginning May 3, 2001 to the May 5, 2000 employment injury.

In support of his claim, appellant submitted several reports from Dr. Rosenberg dated July 19 to November 21, 2001. Dr. Rosenberg's July 19, 2001 report indicated that he last examined appellant on September 20, 2000. Appellant reported developing pain in the neck, upper back and shoulder with tingling and numbness sensations radiating to the left fourth and fifth digits which began two months ago and which worsened with increased activity. He diagnosed appellant with rule in left ulnar entrapment neuropathy at the elbow; rule in left shoulder impingement syndrome; history of cervical spine spondylosis and HNP with associated myofascial pain and muscle tender spots. The medical records submitted most contemporaneously with the alleged recurrence of injury, specifically, Dr. Rosenberg's notes dated July 19, August 2 and 9, 2001 fail to mention a specific date of recurrence nor do they causally relate appellant's current symptoms to his original injury of May 5, 2000. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.[7] Dr. Rosenberg's reports of August 2 and 9, October 10 and November 5, 2001 noted appellant's complaints of spasms in the left upper neck and back area. Dr. Rosenberg diagnosed appellant with a left shoulder impingement syndrome, rule out osteoarthritis of the AC joint; left ulnar nerve entrapment; myofascial pain with muscle spasm; and status post cervical strain/sprain. However, he did not explain how a neck strain and contusion of the chest wall would cause or aggravate any of the other diagnosed conditions. There is no "bridging evidence" which would relate the left shoulder impingement syndrome, left ulnar nerve entrapment; and myofascial pain to the accepted neck strain and chest contusion. That is, the doctor did not explain, how, over 12 months following the accepted neck strain and chest contusion, it was exacerbated by appellant's employment factors to result in left shoulder impingement syndrome, left ulnar nerve entrapment and myofascial pain. The Office never accepted that appellant sustained left shoulder impingement syndrome, left ulnar nerve entrapment and myofascial pain as a result of his May 5, 2000 work injury and there is no

[6] *See Morris Scanlon,* 11 ECAB 384, 385 (1960).

[7] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board found a physician's opinion to be of diminished probative value where the physician's opinion in support of causal relationship was based on a history of injury that was not corroborated by the contemporaneous medical history contained in the case record).

medical rationalized evidence to support such a conclusion.[8] The Board has found that unrationalized medical opinions on causal relationship are of diminished probative value.[9]

Dr. Rosenberg's report of November 21, 2001 indicated that he initially treated appellant on May 31, 2000 after he sustained a neck and shoulder injury and noted that appellant's symptoms improved and he did not require active medical follow-up from September 2000 to July 19, 2001. He indicated that appellant currently had evidence of left rotator cuff impingement syndrome of the left shoulder. Dr. Rosenberg noted that as a result of appellant's work-related activities he experienced an exacerbation of symptoms that were related to the symptoms he had described the previous year when he was being treated for work-related injuries as a result of the May 5, 2000 injury. Even though Dr. Rosenberg noted that appellant was experiencing symptoms of his neck condition which was exacerbated by his work duties, without any further explanation or rationale, such report is insufficient to establish a causal relationship.[10] He further noted that he believed a causal relationship existed between appellant's current symptoms and his May 5, 2000 work injury. Although, Dr. Rosenberg somewhat supports causal relationship in this conclusory statement he provided insufficient medical rationale to support his stated conclusion. Additionally, as noted above, the Office never accepted that appellant sustained left shoulder impingement syndrome, left ulnar nerve entrapment and myofascial pain as a result of his May 5, 2000 work injury and there is no medical rationalized evidence to support such a conclusion.[11]

The report from Dr. Blyznak dated August 15, 2001 noted appellant's complaints of radiating pain in the left arm centered around the elbow which developed a couple of months ago. He diagnosed appellant with left upper extremity pain, possible lower cervical radiculopathy or cubital tunnel syndrome with impingement syndrome. Dr. Blyznak's report of January 14, 2002 indicated a history of appellant's injury noting a few months ago, without any new injuries, appellant developed increasing pain and difficulty with the left arm. He noted that appellant's symptoms from the May 2000 work-related injury resolved with conservative treatment and subsequently appellant developed left upper extremity pain, neck pain and numbness and tingling in his hands. However, the Office never accepted that appellant sustained lower cervical radiculopathy or cubital tunnel syndrome with impingement syndrome as a result of his May 5, 2000 work injury and there is insufficient medical evidence to support such a conclusion.[12] Additionally, Dr. Blyznak noted that "it was likely that his current complaints are related to the initial accident of May 2000." The Board notes that without any further explanation or rationale for the conclusion reached, such report is insufficient to establish a

[8] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

[9] *See Theron J. Barham*, 34 ECAB 1070 (1983).

[10] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

[11] *See Alice J. Tysinger*, *supra* note 8.

[12] *Id*.

causal relationship.[13] Instead, Dr. Blyznak couched his opinion in speculative terms and he did not reference any particular employment factors as causing appellant's condition.[14] Therefore, this report is insufficient to meet appellant's burden of proof.

Other medical reports submitted by appellant did not specifically address causal relationship between his accepted condition and his claimed recurrence of disability or conditions.

Appellant has not met his burden of proof in establishing that he sustained a recurrence of disability attributable to his May 5, 2000 employment injury.

The decision of the Office of Workers' Compensation Programs dated February 23, 1999 is hereby affirmed.

Dated, Washington, DC
October 24, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

[13] *See Lucrecia M. Nielson, supra* note 10.

[14] *See Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).